COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

PETITION OF BELLSOUTH PUBLIC	)	
COMMUNICATIONS, INC. FOR WITHDRAWAL	)	
FROM PROVISION OF PAYPHONE SERVICE	)	
IN KENTUCKY AND MOTION OF BELLSOUTH	)	CASE NO.
TELECOMMUNICATIONS, INC. FOR	)	2003-00261
DEVIATION FROM 807 KAR 5:061,	)	
SECTION 11	)	

O R D E R

On July 2, 2003, BellSouth Telecommunications, Inc. ("BellSouth") filed two petitions with the Commission. The first petition requested that the Commission approve the withdrawal of BellSouth Public Communications, Inc. ("BSPC") from providing payphone service in Kentucky, effective March 31, 2004. The second petition requested that BellSouth be granted a deviation from 807 KAR 5:061, Section 11, which requires a telephone utility to supply at least one public coin-activated telephone in each of its exchanges. Those two petitions were consolidated into this case.

The Commission served notice of this proceeding on the parties to Administrative Case No. 361,[1] the Attorney General and the Metro Human Needs Alliance ("MHNA") and allowed time for comments on the petitions. The Kentucky Payphone Association and the MHNA filed comments on the petitions. Additionally, an informal conference

[1] Administrative Case No. 361, Deregulation of Local Exchange Companies' Payphone Service, Order entered January 5, 1999.

was held to discuss the petitions. Representatives from the Kentucky League of Cities and from the City of Winchester also attended the informal conference.

During the informal conference, BellSouth stated its plans to dissolve BSPC by March 31, 2004. BSPC is a non-dominant payphone provider operating in a deregulated payphone market. Our rules do not contain any requirements for exit or entry into the market. Accordingly, our approval is not required. Prior to the Telecommunications Act of 1996, BellSouth provided payphone service under its incumbent local exchange carrier ("ILEC") operations. Pursuant to 47 U.S.C. § 276, BellSouth divested itself of these payphone assets and formed BSPC to provide payphone service. BellSouth fulfilled the requirements of 807 KAR 5:061, Section 11, through the provision of payphone service by this affiliate, BSPC. Therefore, with the dissolution of BSPC, BellSouth will no longer fulfill the requirements of 807 KAR 5:061, Section 11. BellSouth did, however, state that if the Commission did not grant a waiver of this regulation, it would contract a third party to provide the obligatory payphones.

MHNA has raised significant concerns about the payphone market in Kentucky. The number of payphones in Kentucky is declining. This is not disputed by any of the parties. Many of MHNA's low-income clients rely on the use of payphones for communication needs. MHNA objects to BellSouth's request for an exemption to 807 KAR 5:061, Section 11. Parties have expressed concern about what the state of the payphone market will be in Kentucky after BellSouth's exit.

MHNA recommends that the Commission investigate the need for a public interest payphone program. The Federal Communications Commission ("FCC"), in deregulating payphones, recognized that some payphones which are most critical for public health, safety and welfare purposes, are also the least likely to be self-supporting. Therefore, it directed states to investigate the need for public interest payphones. The Commission determined that there was not a need to establish any additional programs to support payphone deployment, based on the ongoing requirement of 807 KAR 5:061 Section 11.[2]

The FCC has established two goals for payphones: market deregulation and assurance that public needs for payphones are met. 47 C.F.R. Section 64.1330(a) requires that the states review and remove any entry and exit requirements applicable to payphones. 47 C.F.R. Section 64.1330(c) requires each state to review its rules and policies for three purposes: (1) to determine whether the state has provided for public interest payphones consistent with applicable FCC guidelines; (2) to evaluate whether the state needs to take measures to ensure that such payphones will continue to exist in light of the FCC's implementation of 47 U.S.C. Section 276; and (3) to administer and fund such programs so that public interest payphones are supported fairly and equitably. In 1999, the Commission determined that no public interest payphones were needed because ILECs were providing at least one payphone per exchange. BellSouth now wishes to cease providing those payphones. Thus, while BellSouth is entitled to the relief it seeks in this proceeding, such relief must be postponed until we have examined the public interest issues implicated.

In Administrative Case No. 361,[3] the Commission stated as follows:

> [We are] aware that payphones in low income and remote areas serve an important public interest, because in many cases they are the

[2] Id. at 5.

[3] Id. at 6.

> only means by which residents can reach emergency services, potential employers, public welfare agencies and family. Therefore, it is vitally interested in ensuring that adequate numbers of public interest payphones are available throughout Kentucky even where, under market conditions, no supplier of service is willing to place a phone. However, the Commission has received no complaint alleging that there are insufficient payphones in Kentucky. The Commission will defer any action on this issue until such time as an interested party demonstrates that payphone providers are not meeting the need for public interest payphones.

As of October 31, 2003, BellSouth had 30 exchanges in which it does not provide a payphone access line. There are currently nine exchanges in which no one provides any payphone service. An additional 18 exchanges could possibly have no payphone service when BSPC exits the market, because no independent providers currently provide service in these exchanges. Approximately 20 percent of BellSouth's exchanges will have no payphone.

In order to fulfill the two concurrent goals of removing market entry and exit requirements and providing for public interest payphones, the Commission cannot yet relieve any ILEC from ensuring that at least one payphone per exchange is provided. However, this requirement will exist only until the Commission can complete an investigation of the need for, and possible funding of, public interest payphones.

MHNA has requested that the Commission open a docket on public interest payphones and adopt a similar methodology to that adopted in Indiana. The Commission believes that such an investigation needs to be undertaken in a separate case with all interested parties. Before BellSouth or any ILEC is relieved of a duty to provide one payphone per exchange, either itself, or by contract with a third party, or by ensuring that a competitive provider does business in an exchange, these issues must be further explored. Therefore, today we open an investigation into the need for public interest payphones. It is docketed as Case No. 2003-00492, Investigation Into the Need for Public Interest Payphones in Kentucky.

IT IS THEREFORE ORDERED that:

1. BellSouth Public Communications, Inc. may cease to do business in Kentucky effective March 31, 2004.

2. BellSouth's request for a deviation from 807 KAR 5:061, Section 11, is hereby denied, pending the Commission's investigation into the need for public interest payphones.

Done at Frankfort, Kentucky, this 24th day of December, 2003.

By the Commission

ATTEST:

Wm H Bowker

Deputy Executive Director